

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

FANYA GREEN
a/k/a FANYA ZACK

Claim No. CU -3579

Decision No. CU 6816

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Copelon & Schiff
By: Mario J. Zangari, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$375,000.00, was presented by FANYA GREEN, a/k/a FANYA ZACH, and is based upon the asserted ownership and loss of an apartment house and a stock interest in a Cuban corporation. Claimant has been a national of the United States since naturalization on April 25, 1958.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term "property" means any property, right, or interest including any leasehold interest, and

debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1970).)

Claimant asserts that her first husband, Ilya Zack, who died intestate in Cuba in May 1951, owned an apartment house in Miramar, and that by inheritance and an agreement with other heirs of the decedent, she became the sole owner of such property upon his death. Further, claimant has asserted ownership of one-third of the outstanding stock of a corporation known as Topeka, S.A., which is said to have held approximately 110,000 square meters of land adjoining the Rancho Boyeros Highway, leading from the City of Havana to the airport.

Apartment Building

Claimant has submitted a copy of a Contract of Sale and Purchase dated August 4, 1943, whereby Ilya Zack purchased a plot in Miramar; an architect's plan for the apartment house of Il Zack; a copy of an Agreement of Repudiation and Acceptance of Inheritance, dated December 11, 1951, with affidavits and canceled checks concerning settlement of the Estate of Il Zack, deceased. On the basis of the entire record, the Commission finds that claimant was the sole owner of improved real property, an apartment house, located at #14 - 12th Street, Miramar, Marianao, Havana Province, Cuba.

The Commission further finds that this improved real property was taken by the Government of Cuba under its Urban Reform Law, and that the taking occurred on October 14, 1960, the date on which the law was published in the Cuban Gazette. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

In connection with the improved real property in Miramar, the record includes that contract of sale executed in 1943 as well as architectural drawings approved by the late Il Zack. This evidence discloses that the property consists of a lot of 900 square meters improved by an apartment house of four floors, with 40 apartments of one or two bedrooms. Claimant has also submitted tax data, a copy of an insurance policy on the improvements and her statements concerning the value of such property. On the basis of the entire record, including evidence available to the Commission concerning the value of similar property in this area of Havana Province, the Commission finds that this real property had a value of \$218,750.00 at the time of loss in 1960.

Topeka, S. A.

With respect to the asserted stock interest of claimant in the corporation known as Topeka, S.A., the record includes copies of affidavits of former residents of Cuba which indicate that she and her two associates were the sole stockholders of the corporation, each owning a one-third interest; that they each invested \$65,000.00 in the early 1950's for stock of the corporation. It is said the corporation held a tract of land consisting of 110,000 square meters located near the Rancheros Boyeros Highway, leading from the City of Havana to the airport.

The Commission finds that the asserted ownership interest is not established. Moreover, no balance sheet or similar data has been submitted to establish the value of the corporation at the time of asserted loss; and no evidence has been submitted to establish its asserted holding of 110,000 square meters of land. Neither can it be held that any investment in the early 1950's reflected the value of any loss in 1960. Accordingly, the Commission finds that claimant has not sustained the burden of proof and this item of claim is denied.


The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

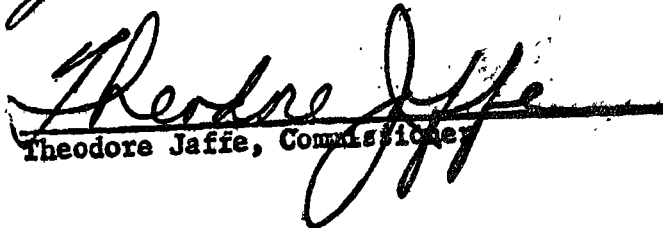
CERTIFICATION OF LOSS

The Commission certifies that FANYA GREEN a/k/a FANYA ZACK suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Hundred Eighteen Thousand Seven Hundred Fifty Dollars (\$218,750.00) with interest thereon at 6% per annum from October 14, 1960 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

SEP 22 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended (1970).)

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